IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5714 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

MAHAKALI SURVODAY SEVA SANGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5714 of 2001

MR YF MEHTA for Petitioner No. 1

MR ND GOHIL, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 07/05/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri N.D. Gohil for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner is a charitable trust, which is running an ashram shala at Village Phuletra, Taluka Kadi, District Mehsana. The petitioner has been aggrieved by an order dated 14.3.2000 passed by the State of Gujarat, whereby an order cancelling recognition of the ashram shala has been confirmed.

3. It has been submitted by learned advocate Shri Y.F. Mehta appearing for the petitioner that the petitioner trust is running the ashram shala and at the relevant time there were 40 students in the ashram shala. He has submitted that formerly 90 students were accommodated in the ashram shala but strength of the sanctioned students had been reduced to 40. It has been submitted by him that in the course of usual inspections carried out by the representatives of the Director of Scheduled Castes Welfare, it was found that the ashram shala was not managed properly. It has been submitted by learned advocate Shri Mehta that there are certain discrepancies in the final order dated 14.3.2000 passed by the State of Gujarat. It has been submitted by him that certain relevant factors had not been considered while passing the impugned order and, therefore, the said order should be quashed and set aside.

4. It has been submitted by him that the ashram shala was inspected by a representative of the Director of Scheduled Castes Welfare on 25th August 1999, 28th October 1999 and on 2nd December 1999. It has been submitted by the learned advocate that no student was found at the ashram shala on 25th August 1999 and on 28th October 1999, whereas on 2nd December 1999, 38 students were found. It has been submitted by the learned advocate that the petitioner had given an explanation as to why the students were absent at the time when the inspection was carried out on 25th August 1999 and on 28th October 1999. It has been submitted by him that 25th August 1999 was 'Raksha Bandhan' day and that being a pubic holiday, the students had proceeded to their respective residences and, therefore, no student was found on that day. So far as absence on 28th October 1999 is concerned, it has been submitted that the students had gone on tour. Of course, it has been very fairly submitted by the learned advocate that necessary intiamtion was not given to the concerned authority. It has been submitted that at the time when the ashram shala was inspected on 2nd December 1999, out of 40 students, 38 students were present and as out of 40 students, 38 students were present, it cannot be said that less number of students were present and absence of 2 students should

not be a reason for cancelling recognition of the ashram shala.

5. On the other hand, learned AGP Shri N.D. Gohil has submitted that on 28th October 1999 no student was found and the explanation which was given by the petitioner was not correct. If the students had gone on tour, it was duty of the petitioner trust to give intimation with regard to the tour to the District Backward Class Welfare Officer. Moreover, it was also found that bath rooms and toilets were not in good shape. It has been therefore submitted by him that the impugned order is just, legal and proper. According to him, if the ashram shala is not being properly managed, there is no obligation on the part of the government authorities to continue recognition of such an ashram shala and, according to him, looking to the fact that the students were absent, the recognition was rightly canceled by the impugned order.

6. I have heard the learned advocates and have also perused the affidavit-in-reply filed on behalf of the respondent authorities. Upon perusal of the impugned order and the relevant material, it is clear that the ashram shala was inspected on three different occasions. So far as the first visit is concerned, it is not in dispute that 25th August 1999 was Raksha Bandhan day and, therefore, the authorities cannot expect the students to be in the ashram shala. Possibly, they must have gone to their respective residences and therefore no student was found at the ashram shala.

7. So far as the absence of students on 28th October 1999 is concerned, it appears that the students were sent on tour without taking proper permission from the District Backward Class Welfare Officer, Mehsana. At the time when the students had proceeded on tour, there were only 4 bags belonging to the students and beddings were also not there. If the students had gone on tour, possibly the students might have taken their beddings along with them. Moreover, it also appears that the petitioner had placed on record a receipt issued by Raj Travels, whose bus was taken on hire by the petitioner, for taking the students on tour. Thus, sufficient evidence was adduced to show that the students had proceeded on tour. Of course, learned advocate Shri Mehta has fairly conceded the fact that necessary permission ought to have been obtained from the District Backward Class Welfare Officer, Mehsana before taking the students for a tour, but according to the learned advocate, that for making such a mistake, the government

authorities ought not to have become so harsh so as to cancel the recognition.

8. So far as the third visit is concerned, it appears that out of 40 students, 38 students were present on 2nd December 1999. It cannot be said that the presence was meagre. Absence of 2 students out of 40 students cannot be treated to be very serious.

9. It has been observed in the impugned order that out of 40 students, 32 students were present on 25th August 1999, which was Raksha Bandhan day. There appears to be some discrepancy. Perhaps no student was present on 25th August 1999 as that was a Raksha Bandhan day. The said statement recorded in the impugned order is not correct.

10. Looking to the discrepancy with regard to presence of students on 25th August 1999 and in view of the fact that 38 students were present out of 40 students on 2nd December 1999, in my opinion, the impugned order requires to be quashed because, prima facie, it appears that some mistake has been committed while perusing the record. So as to find out whether, in fact, 32 students were present on 25th August 1999, this court had asked for relevant record but somehow the said record could not be produced today.

11. Looking to the fact that some work with regard to construction of the bath rooms and toilets has also been started and as there was some discrepancy with regard to presence of students on 25th August 1999, it appears that the impugned order requires to be reconsidered by the concerned authority after looking into all relevant facts.

12. In the circumstances, the impugned order dated 14.3.2000 is quashed and set aside with a direction that the appeal shall be heard by the government again. All relevant facts shall be considered by the appellate authority. Incidentally, it has been submitted by learned advocate Shri Mehta appearing for the petitioner that now it is not necessary for the ashram shala to have any land. He has relied upon a resolution. Of course, the said resolution has been passed after 14.3.2000. The appellate authority shall also examine whether the said resolution is applicable to the petitioner.

13. The appeal shall be heard by the appellate authority as expeditiously as possible and preferably within a period of 3 months from today.

14. The petition is thus allowed. The imugned order dated 14.3.2000 is quashed and set aside and the Government is directed to hear the appeal afresh as directed hereinabove. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(hn)